

**To:** Mahmud, Shahid[Mahmud.Shahid@epa.gov]  
**From:** Marcy, Ken  
**Sent:** Thur 8/13/2015 4:14:04 PM  
**Subject:** FW: SOme messages we may want to work on

Hey Shahid – you are inundated I know – just wanted to get this out to you:

- My impression was that rather than working on messaging, our more immediate concern was to ensure that EPA was not currently involved in on site activities (primarily CERCLA type) at mines that pose risk of release until we understand the details of what happened.
- When we finally do know exactly what happened (my sense from the DD call is that the details are unclear), then I think we can clearly articulate a message – and in my own view, I think the messaging discussion during the mining team meeting yesterday was off track. We need to acknowledge our mistake – take measures to ensure it never happens again – acknowledge the impact of that mistake and the measures we are taking to mitigate the impact.
- Once that is done, I agree, we need to have a bigger dialogue about the problems of mine sites in general while the topic is hot, but I think that taking the tack that mines are “complicated” and this happens all the time (pointing fingers at states, private companies, other feds) is totally off. At a minimum, we need a much more robust inventory of sites and the risks posed, whether EPA lead, or not, and whether active, abandoned, or closed.

Thanks for hearing me out and good luck in getting through this! Ken

**From:** McKim, Krista  
**Sent:** Thursday, August 13, 2015 5:23 AM  
**To:** Mahmud, Shahid  
**Cc:** Adams, Bill; Biggs, Kirby; Carr, Lofton; Casanova, Rafael; Doolan, Mark; Gunter, Jason; Hanley, Jim; Hathaway, Ed; Hillenbrand, John; Hoogerheide, Roger; Jackson, Brad; Jenkins, Joy; Mahmud, Shahid; Mahoney, Michael; Marcy, Ken; Moreen, Ed; Price, Lisa; Progeess, Christina; Purcell, Mark; Riley, Gary; Root, Charlie; Sparks, Sara; Teichert, Candice; Tomten, Dave; Adams, Bill; Autrey, Brad; Aycock, Jim; Baumgarten, Gary; Bless, Diana; Butler, Barbara; Carr, Lofton; Chadwick, Dan; Cherepy, Andrea; Conway, Bette; Cozza, Daniel; Cruz, Francisco; Desai, Sheila; Deschambault, Lynda; Devito, Steve; DiCosmo, Nefertiti; Dixon, Douglas; Doolan, Mark; Forren, John; Forrest, Sabrina; Geselbracht, Jeanne; Godsey, Cindi; Goodrick, John; Grandinetti, Cami; Hanley, Jim; Hardy, Michael; Hathaway, Ed; Hillenbrand, John; Hood, Lynne; Housman, Van; Hudiburgh, Gary; Jackson, Brad; Jenkins, Joy; Jessop, Carter; Byrne, Jim; Johnson, Brent; Long, Larry; Lavaty, Ann; Lazorchak, Jim; Lensink, Andy; Lesser, Ben; Ellis, Lisa; Low, Seth; Mahmud, Shahid; Mahoney, Michele; Manoyan, Simon; Marcy, Ken; Mayer, Kevin; Miller, Anna; Egidi, Philip; Progeess, Christina; Purcell, Mark; Riley, Gary; Root, Charlie; Roy, Stephen; Russell, Carol; Teichert, Candice; Teitelbaum, Daniel; Tiago, Joseph;

Tomten, Dave; Watt, Jamey; Wilkening, Matt

**Subject:** FW: SOme messages we may want to work on

Shahid,

In addition to what I sent yesterday I wanted to add a few more ideas on our messaging. Apologies if these ideas have already been raised, but I'm not on the distribution list so I don't know (hint!). also, does anyone know who is leading this while Shahid is out of the office today and tomorrow?:

I think this is an opportunity to point out some big picture issues with this industry:

We were there because the company who mined this area abandoned the site without any regard to ensuring that they closed the site to minimize or eliminate the risk the site posed to public health and environment.

The issue of mining companies failing to properly close sites before they walk away is one that is still a serious issue today. Companies walk away from bonds that have been provided to regulatory authorities because the cost and complexity of properly closing many mine sites far outweighs the value of the bonds they have provided in order to be allowed to mine (then segway to discussion on 108b)

The longer amount of time that an abandoned mine site stands without being studied and addressed, the likelihood of an incident occurring at the site as well as the potential magnitude of the incident goes up. This would be due to decay and collapse of features, buildup of water where there are features capable of holding back water, and buildup of contaminants due to contact of contaminant bearing material with water.

Not sure we can say this yet but I'm also thinking of something along the lines of:

There are many areas in the US where mining is occurring or has occurred in areas with many mines in close proximity to each other. In many cases the mines are interconnected hydrologically, and also in many cases each mine maybe in a variety of states of active/inactive/closed/abandoned. The individual mines across these mining ranges or areas may be managed by a variety of entities. In these instances, actions taken at one mine may

have an effect at neighboring mines which can be extremely hard to predict and adds to the uncertainty and risk of potential incidents at mines.

We should discuss what we ARE doing. For example, what Gary H provided in his suggestion, and also the 108 b rulemaking.

I think we should also bring in the work that was done to conclude the mining was determined to be the highest risk industry for creating sites that wind up in the superfund program.

I'm wondering what we are going to do with these messaging ideas. Do we have a plan to draft a memo to management? if so I would be happy to help.

Thanks,

Krista

Krista McKim, PE

Environmental Engineer

Region 5 Mining Team Leader

US EPA

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**From:** Roy, Stephen

**Sent:** Wednesday, August 12, 2015 2:28 PM

**To:** McKim, Krista

**Subject:** FW: SOme messages we may want to work on

**From:** Mahmud, Shahid

**Sent:** Wednesday, August 12, 2015 1:43 PM

**To:** Adams, Bill; Biggs, Kirby; Carr, Lofton; Casanova, Rafael; Doolan, Mark; Gunter, Jason; Hanley, Jim; Hathaway, Ed; Hillenbrand, John; Hoogerheide, Roger; Jackson, Brad; Jenkins, Joy; Mahmud, Shahid; Mahoney, Michael; Marcy, Ken; Moreen, Ed; Price, Lisa; Progeess, Christina; Purcell, Mark; Riley, Gary; Root, Charlie; Sparks, Sara; Teichert, Candice; Tomten, Dave; Adams, Bill; Autrey, Brad; Aycock, Jim; Baumgarten, Gary; Bless, Diana; Butler, Barbara; Carr, Lofton; Chadwick, Dan; Cherepy, Andrea; Conway, Bette; Cozza, Daniel; Cruz, Francisco; Desai, Sheila; Deschambault, Lynda; Devito, Steve; DiCosmo, Nefertiti; Dixon, Douglas; Doolan, Mark; Forren, John; Forrest, Sabrina; Geselbracht, Jeanne; Godsey, Cindi; Goodrick, John; Grandinetti, Cami; Hanley, Jim; Hardy, Michael; Hathaway, Ed; Hillenbrand, John; Hood, Lynne; Housman, Van; Hudiburgh, Gary; Jackson, Brad; Jenkins, Joy; Jessop, Carter; Byrne, Jim; Johnson, Brent; Long, Larry; Lavaty, Ann; Lazorchak, Jim; Lensink, Andy; Lesser, Ben; Ellis, Lisa; Low, Seth; Mahmud, Shahid; Mahoney, Michele; Manoyan, Simon; Marcy, Ken; Mayer, Kevin; Miller, Anna; Egidi, Philip; Progeess, Christina; Purcell, Mark; Riley, Gary; Root, Charlie; Roy, Stephen; Russell, Carol; Teichert, Candice; Teitelbaum, Daniel; Tiago, Joseph; Tomten, Dave; Watt, Jamey; Wilkening, Matt

**Subject:** SOme messages we may want to work on

I am forwarding an email from Gary who has some good ideas on messaging in the very near future. Can your regions start getting this information so we can construct the national message. Thanks!

Shahid Mahmud  
Team Leader  
EPA Abandoned Mine Lands Team  
703-603-8789

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**From:** Hudiburgh, Gary

**Sent:** Wednesday, August 12, 2015 2:00 PM

**To:** Mahmud, Shahid

**Subject:** RE: Congressmen: EPA Must Answer For Spilling Toxic Waste

Shahid –

Some ideas

In FY 2015, EPA has performed similar removal/remedial actions at xx abandoned HR mines in yy states. Over the history of the ZZZ program, this is the first (?) such event similar to that at the Gold King Mine..

Short summary of what we have done since day zero.

EPA has acknowledged liability, and is and will continue to work with affected States, Tribes and munis. We have also set up claims form for harmed individuals to seek compensation. We also recognize we may be sued for damages caused by this event.

**From:** Mahmud, Shahid

**Sent:** Wednesday, August 12, 2015 1:45 PM

**To:** Adams, Bill; Biggs, Kirby; Carr, Loftan; Casanova, Rafael; Doolan, Mark; Gunter, Jason; Hanley, Jim; Hathaway, Ed; Hillenbrand, John; Hoogerheide, Roger; Jackson, Brad; Jenkins, Joy; Mahmud, Shahid; Mahoney, Michael; Marcy, Ken; Moreen, Ed; Price, Lisa; Progeess, Christina; Purcell, Mark; Riley, Gary; Root, Charlie; Sparks, Sara; Teichert, Candice; Tomten, Dave; Adams, Bill; Autrey, Brad; Aycock, Jim; Baumgarten, Gary; Bless, Diana; Butler, Barbara; Carr, Loftan; Chadwick, Dan; Cherepy, Andrea; Conway, Bette; Cozza, Daniel; Cruz, Francisco; Desai, Sheila; Deschambault, Lynda; Devito, Steve; DiCosmo, Nefertiti; Dixon, Douglas; Doolan, Mark; Forren, John; Forrest, Sabrina; Geselbracht, Jeanne; Godsey, Cindi; Goodrick, John; Grandinetti, Cami; Hanley, Jim; Hardy, Michael; Hathaway, Ed; Hillenbrand, John; Hood, Lynne; Housman, Van; Hudiburgh, Gary; Jackson, Brad; Jenkins, Joy; Jessop, Carter; Byrne, Jim; Johnson, Brent; Long, Larry; Lavaty, Ann; Lazorchak, Jim; Lensink, Andy; Lesser, Ben; Ellis, Lisa; Low, Seth; Mahmud, Shahid; Mahoney, Michele; Manoyan, Simon; Marcy, Ken; Mayer, Kevin; Miller, Anna; Egidi, Philip; Progeess, Christina; Purcell, Mark; Riley, Gary; Root, Charlie; Roy, Stephen; Russell, Carol; Teichert, Candice; Teitelbaum, Daniel; Tiago, Joseph; Tomten, Dave; Watt, Jamey; Wilkening, Matt

**Subject:** Fw: Congressmen: EPA Must Answer For Spilling Toxic Waste

**Importance:** High

Shahid Mahmud  
Team Leader  
EPA Abandoned Mine Lands Team  
703-603-8789

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**From:** Lesser, Ben  
**Sent:** Wednesday, August 12, 2015 1:33 PM  
**To:** Mahmud, Shahid  
**Subject:** Congressmen: EPA Must Answer For Spilling Toxic Waste

Daily Caller News Foundation

Congressmen: EPA Must Answer For Spilling Toxic Waste

Michael Bastasch, 1:17 PM 08/12/2015

Republican congressmen are calling for the EPA to be held accountable for spilling 3 million gallons of toxic mine wastewater into the Animas River last week, especially since the agency is a government entity and won't be punished to the same degree a private company would for spilling waste.

"The EPA must be held accountable for its actions," Rep. Lamar Smith told The Daily Caller News Foundation in an emailed statement. "If a private company caused such a disaster, it would be hit with substantial penalties and would be required to pay for cleanup."

"In this case, it will be the taxpayers who foot the bill," the Texas Republican said. "The EPA has an obligation to the families and businesses that have been devastated by this spill."

The EPA has taken the responsibility for the spill and agency chief Gina McCarthy is set to visit areas of Colorado and New Mexico that have been harmed by the spill. Both Colorado and New Mexico have declared a state of emergency and allocated funding towards helping those affected by the spill.

McCarthy's visit, however, is unlikely to be a happy one, as state officials and residents are furious with the agency for accidentally spilling millions of gallons of waste. The spill has already forced tourism businesses in the area to close until the contaminates in the river return to safe levels.

Republican lawmakers are already demanding the EPA turn over information on the spill and hold regular briefings with lawmakers on the agency's progress.

"This has and will continue to lead to significant economic damage to local businesses, farmers, tribes, and residents," Sen. Jim Inhofe, an Oklahoma Republican, said in a statement. "I will work within the Committee and with my colleagues in Congress to ensure the EPA is held accountable to this grave incident and that those impacted are provided the necessary support to move forward."

Republicans have specifically pointed out the EPA won't be subject to the same level of scrutiny as a private company would. As a government agency the EPA can't fine itself the way it would fine a private entity for spilling toxic waste. Many other mining companies have been fined millions of dollars for spills that were likely smaller than the one at Gold King Mine.

"Sovereign immunity. The government doesn't fine itself," Thomas Sansonetti, a former assistant attorney general at the Justice Department, told the Washington Times. "The EPA does not fine itself the way that you would fine an outside company like BP."

So how much would a private company have to pay for a spill of this size? It's not exactly clear, but it would likely be a sizable fine.

"The CWA does not specify how much a fine for this should be," M. Reed Hopper, an attorney with the Pacific Legal Foundation, told The Daily Caller News Foundation. "I believe the Army Corps of Engineers or EPA would have to take into account the amount of the spill, the harm done to the environment, and the negligence of the agency in causing the spill."

While there are many considerations that go into fining a private party for violating the CWA, the EPA's website contains information on the punishment for those who "negligently or knowingly" discharges pollutants "from a point source into a water of the United States without" a permit or in excess of a permit.

(Note: "knowingly" discharging a pollutant can apply to parties who may actually be aware they're violating the law)

The EPA's website says a negligent violation could carry a one-year penalty and/or \$2,500 – 25,000 per day" in fines — and that's per violation. The EPA adds that knowing violations can carry a "3 years and/or \$5,000 – 50,000 per day" penalty.

"So, the fine would be on some sort of sliding scale, but would be substantial for a private party," Hopper said. "Depending on the content of the discharged material, other federal laws may come into play such as CERCLA (Superfund) and clean up costs could be levied against the discharger at a very steep price. As for whether a private party would be criminally liable, some have gone to jail for less."

Interestingly enough, private actors who have been found guilty of spilling waste in waterways have been fined millions of dollars. In March 2011, Consol Energy was fined \$5.5 million for violating the Clean Water Act (CWA) by emitting chloride and other pollutants into a West Virginia creek. On top of that, the company was forced to install \$200 million in water pollution controls.

That same month, Arch Coal was fined \$4 million for violating the CWA by discharging more waste into Appalachian waterways than their federal permits allowed. The company also had to take measures to ensure the spills never happened again. The next month, a subsidiary of

Monsanto was slapped with a \$1.4 million fine for discharging wastewater with selenium and other heavy metals without a permit in Idaho — the company paid \$875,000 monitoring equipment.

Read more: <http://dailycaller.com/2015/08/11/epa-employees-load-obama-dems-with-dough/#ixzz3icglZPqj>